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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/788,496

02/27/2004

Andrew F. Nowak

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12/07/2006

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EXAMINER

FIDEI, DAVID

ART UNIT

PAPER NUMBER

3728

DATE MAILED: 12/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

NY

<b>Office Action Summary</b>	<b>Application No.</b> 10/788,496	<b>Applicant(s)</b> NOWAK, ANDREW F.	
	<b>Examiner</b> David T. Fidei	<b>Art Unit</b> 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3 and 5-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 5-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>2/27/04</u> . | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election without traverse of the invention in the reply filed on October 25, 2006 is acknowledged.

### ***Specification***

2. The abstract of the disclosure is objected to because the brief description of figure 4 appears incorrect as there is no bag in figure 4. Correction is required. See MPEP § 608.01(b).

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-3 and 6-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Jensen et al (US Patent no. 4,873,193). A substantially opaque container 12, 14 is disclosed, see col. 4, lines 39, 40, containing a "gift" item in as much as is set forth, page 7, second paragraph of the present specification. Written information is provided that accompanies the container that is provided by label 26.

As to claim 2, the written material can be said to be applied directly to the container in that the label is applied directly to the container and not some intermediate medium.

As to claim 6, the container 12 with lid 14 resembles a light-sensitive pharmaceutical bottle.

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As to claim 7, threaded locking structure 16 are disclosed.

As to claim 8, Official Notice is taken that the use of a snap-fit structure for securing a lid to a container. To employ such an engagement structure in the device of Jensen would have been a substitution of locking structure in view of Official Notice.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-3, 6 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson et al (US Patent no. 5,690,246) in view of Jensen et al (US Patent no. 4,873,193). Anderson et al figure 1 discloses a container 20 having a snap fitting lid structure 24 for containing a "gift" item in as much as is claimed and disclosed. The difference between the claimed subject matter and Anderson et al resides in the container being substantially opaque, Anderson et al is silent regarding this feature, and written information accompanying the container.

Jensen et al discloses both of these feature as described above. It would have been obvious to one of ordinary skill in the art to modify Anderson et al to provide written information on the container as suggested by Jensen et al, in order to provide information pertinent to the sample. Providing an opaque container would have been obvious in order to obscure the contents.

7. Claims 1 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over McKee (US Patent no. 4,860,899) in view of Mangini et al (US Patent no. 5,046,609). McKee discloses a combination comprising a bag 21 for dispensing medication 24 having information printed

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directly to member 21 that accompanies the container 24. The difference between the claimed subject matter and McKee resides in the packet 24 being substantially opaque container and lid.

Mangini et al teaches a manner of dispensing medication where a container 3 is provided with a label and is depicted as of the conventional lid/container type. It would have been obvious to one of ordinary skill in the art to modify the system of McKee by providing a dose container of the type disclosed by Mangini et al, in order to provide a more readily filled and used dispensing container.

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

**REPLY BY APPLICANT OR PATENT OWNER TO THIS OFFICE ACTION**

9. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F. R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06 II(A), MPEP 2163.06 and MPEP 714.02. The "disclosure" includes the claims, the specification and the drawings.

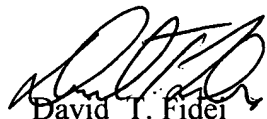
If no amendments are made to claims as applicant or patent owner believes the claims are patentable without further modification, the reply must distinctly and specifically point out the supposed errors in the examiner's action and must respond to every ground of objection and rejection in the prior Office Action in the same vain as given above, 37 CFR 1.111 (b) & (c), M.P.E.P. 714.02.

The examiner also points out, due to the change in practice as affecting final rejections, older decisions on questions of prematurity of final rejection or admission of subsequent amendments do not necessarily reflect present practice. "Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c)" (emphasis mine), see MPEP 706.07(a).

**Conclusion**

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David T. Fidei whose telephone number is (571) 272-4553. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
David T. Fidei  
Primary Examiner  
Art Unit 3728

dtf  
December 5, 2006